Supreme Court, U.S.
FILED
FEB 24 2003
OFFICE OF THE CLERK

(3)

No. 02-880

In The

Supreme Court of the United States

Mukand Aneja
Petitioner,

V.

Triborough Bridge and Tunnel Authority
Respondent(s)

On Petition for A Writ Of Certiorari To
United States Appeal Court Second Circuit

REPLY TO BRIEF IN OPPOSITION

Mukand Aneja -Pro Se
3 Braun Court
Park Ridge, NJ 07656
(201) 573-0286

17 pp

TABLE OF CONTENTS

Reeves vs. Sanderson Plumbing Products Inc., 530 US. 133,143 (2000)—No. 99-536 Discrimination----------1

QUALITY AND QUANTITY OF EVIDENCE SUBMITTED TO DISTRICT COURT----------2

QUALITY AND QUANTITY OF EVIDENCE SUBMITTED TO APPELLATE COURT----------3

PERFORMANCE---------- -9

THERE ARE MATERIAL ISSUES OF FACT IN DISPUTE MAKING SUMMARY JUDGMENT INAPPROPRIATE----------10

CONCLUSION ----------10

REVISION TO PETITION PAGES--- 4 pages(6.7.9, & App17)

This is Petitioner's response to Respondents brief in opposition. Respondent's highly skilled professional litigation counsel is trying to mislead the court. Due to page limitation Petitioner will provide response relevant to important items for Court's review and consideration as follows:

A1). Reeves vs. Sanderson Plumbing Products Inc., 530 US. 133,143 (2000)—No. 99-536 Discrimination.
The Supreme Court ruled unanimously that it is not necessary—as some appeals courts have held—for an employee to provide specific evidence pinpointing discrimination as the real reason for being fired.

It may be enough just to show **"some"** evidence of age bias and to cast doubt on the employer's given reason for the dismissal. Then it's up to a jury to decide whether discrimination was a key factor in the firing.

The company claimed Reeves was fired for keeping shoddy attendance records of the staff he supervised.

Although a jury ruled in Reeves' favor, a court of appeals reversed the jury's decision, noting that the age-related comments were not made in context of Reeve's dismissal.

The Supreme Court disagreed with the appeals court and not only reinstated the jury verdict—but also laid some ground rules on what it takes for an age bias case to merit a jury trial.

The Supreme Court ruled that an employee who claims age bias is entitled to a trial by jury depends on two factors: the quantity and quality of evidence that the employer treated the employee adversely and whether a jury might reasonably conclude that the employer's given reason for the dismissal was false.

A2) . QUALITY AND QUANTITY OF EVIDENCE SUBMITTED TO DISTRICT COURT

Plaintiff submitted counter statement in response to Defendant's undisputed material fact (23 pages).Plaintiff also submitted 28 pages of plaintiff's statement of undisputed material fact. Also,2 ½ inches thick voluminous material (as Appendix) had been submitted to the court (96 Civ.7598) containing quantity and quality of material.
Second District Court Judge granted summary judgment on 11/2/99 (96 civ. 7598) **prior to Reeves decision.**

A3) . QUALITY AND QUANTITY OF EVIDENCE SUBMITTED TO APPELLATE COURT

. Plaintiff-Appellant, in his reply has submitted thirty (30) paragraphs of factual statements backed by deposition/documents (132 pages) which deal with quality and quantity of evidence as Supreme Court established in Reeves vs. Sanderson Plumbing 530 US 133 (2000). Unfortunately, Appellate court did not review evidence.

Only a few facts from the above document are being cited to illustrate quality and quantity of material facts.

4. Appellant Mr. Aneja was an excellent employee. This was admitted by defendant (A-71) "although his technical skills are excellent --" - Plaintiff was unaware of any complaints concerning his work performance (A-98). Plaintiff can prove that he had exceeded or met the job description as specified by A-23.

4A Plaintiff as a Facility Engineer, supervised two managers (Gadi Amit—Construction Mgr. And Nick Popescu—Project Manager), one secretary and 9 construction and design contractors. Also, two Licensed Professional resident engineers and a staff of 6 employed by consultant. Only two individuals (Gadi Amit and Nick Popescu) were deposed. My secretary and two contractors and two Professional Licensed Engineers are expected to appear in expected jury trial as friendly witnesses and they have not been deposed. Other TBTA Dept. personnel were deposed, and except for a few individuals, who were coerced by Stan Vonasek to provide negative comments, remained honest. A few of the depositions are summarized to give a sample of TBTA predetermined management action, once Stan Vonasek decided to get rid of Plaintiff. (P Exh.1—135). Plaintiff had submitted 135 exhibits labeled as P.Exh. to U.S.District Court and defendant on 11/30/98. However, only a few pertinent exhibits are attached herewith, for easy retrieval.

Footnote1: Plaintiff had submitted 135 exhibits labeled as P.Exh. to U.S. District Court and defendant on 11/30/98. However, only a few pertinent exhibits are attached, herewith for easy retrieval. Footnote 2. All items identified by (A) are

listed in defendant-appellee's appendix pagination have been identified by enclosed table of appendix (pg 7-9)

4B. Gadi Amit never complained about Plaintiff while Aneja was at TBTA. See P.Exh.104 page 80-81.

4C. Nick Popescu also never complained about Plaintiff while Aneja was at TBTA. See P. exh. 105 pages 44,45,46.

4D. Stan Vonasek admitted (P.Exh.103 pg.166) that he was soliciting negative comments against Aneja.

4E. Defendant Appendix A—89&90 states that contractors complained about Aneja. That is not factual. No complaint was received and/or documented.

4F. Asst. Direct. Of the Design Group, Mr. Segal stated that he had no problem with Aneja. He also stated that Aneja had plans to save millions of dollars for TBTA (P Exh.106)

4G. Another important officer of the TBTA, an EEOC officer, Mr. Smith stated that he had no problem with Aneja's communication and/or management skills. He tried to get Plaintiff reinstated but did not succeed. (P exh.114) Mr. Smith discussed with his supervisor (Mike Ascher—President of TBTA) Mr. Ascher told him that TBTA should have given training to Aneja in early March on how to do business the TBTA way.

4I. Stan Vonasek never followed "so called" corrective action, due to the fraudulent nature of his "performance review of Aneja." This evaluation was not reviewed by his

supervisor and the Personnel Dept. as required by TBTA's procedures, goals and mission statement.

5. Plaintiff claims (A-97) "in June 1994, during a staff meeting Stan persistently asked me, three or four times, the year of my birth, when I finally told him it was 1937, he responded: " I hire all kinds of people..." (See also A-239). From this evidence a reasonable inference could be drawn in favor of plaintiff's allegations of age discrimination and thus dismissal on this count is not proper.

5a. TBTA admits that Mr. Vonasek asked Aneja's age (See Defendant's undisputed Fact) submitted in response to motion for summary judgment on 11/30/98). However, Mr. Vonasek denies asking my age and having any knowledge of my exact age as of 9/3/97 (see P.Exh.103 deposition dated Sept, 3,1997 Page 97 & 98), which is not true.. Mr. Vonasek has also seen Plaintiff's age and national origin based complaint, filed in 1996.

5d. Once Stan Vonasek discovered my age, Mr. Vonasek was not appreciative of my aggressiveness in resolving complex facility problems, which I inherited from Tom Hynes, previous facility engineer. In fact, he commented, that I was good at taking over the reigns at the Rockaway's (A-88). Even though I have never seen this document while I was at TBTA, I showed M. Vonasek that Aneja, as Facility Engineer, could save TBTA significant sums of money, by not going to Marracap construction, but rather to SN Tannor/Daskell (P.exh.7 to 19) and still do timely construction with approved change order. However, Stan did

not appreciate because he wanted Marracap to do the job to make an exorbitant profit.

6a. Plaintiff can and will prove that he inherited most of the job-related problems created by the previous Facility Engineer at Rockaway Bridges (Thomas Hynes), whose job plaintiff took. (P exh 23,34,47,57,58,117,etc.) However, Mr. Thomas Hynes was neither disciplined nor written up. Mr.Hynes is older than Aneja but happens to be Caucasion and was given all kinds of favoritism as compared to Plaintiff, who is of Indian origin. Mr. Hynes has been the subject of investigation by the Inspector General as a result of complaints on the White Stone Bridge. Mr.Hynes also mismanaged facility engineering responsibilities at White Stone Bridge. He was removed and assigned to General Projects, whereas Aneja was given a performance evaluation in September 1994 with 45 days to improve, obviously in keeping with Stan's fraudulent intentions.of getting ride of Aneja. Vonasek's supervisor and Personnel Dept. did not review this evaluation. There was no written consent (A-61). No action was taken by Mr. Vonasek in trying to improve what he alleged was Aneja's poor performance, since 9/19/94.

6b. Also, in closed-door meeting on September 19, 1994, Mr. Vonasek made comments regarding foreign accent and writing skills. Aneja, Amit & Popescu are foreign born. Mr. Popescu, still working for Vonasek denies having this meeting; however, entries in his diary indicate that that meeting took place on Sept.19,1994, and writing skills, etc. which were discussed were all documented (P.Exh—88) The third person who attended this meeting, Mr. Gadi Amit, testified when asked about this meeting. "Do you recall that

Stan Vonasek told us in a closed door meeting on September 19,1994, you people are foreign born, so you have to sharpen your communication skills." Mr. Gadi replied, "I don't recall, but he could have." (P exh.104) Also, Aneja's note in his diary mentions that meeting (P Exh 87).

8. Mr. Vonasek has told untruths 11 times for money and other matters, as documented by deposition and/or letters written to others by Vonasek. Let jury decide..

8a TBTA has an extensive Training Program, particularly if a candidate is subject of performance evaluation (P Exh 98). No such training was provided, as was offered to other Facility Engineers (P Exh.99)

8b. Mr. Vonasek mislead Aneja by stating that his informal performance evaluation of Aneja on 9/8/94 was going to stay in the Engineering and Construction Dept. only.

8c. Vonasek supervisor (Leland Caldwell) never reviewed &/or signed the evaluation sheet

8d. No individual from the Personnel Dept.either reviewed &/or signed the sheet due to the fraudulent intention of Vonasek's evaluation.

8e Edna Williams testified that, according to procedure, Mr. smith, EEOC officer, must have also seen and reviewed it prior to signing it. This is not factual since Smith did not know per his deposition and didn't sign.

8f TBTA mislead EEOC by not revealing that each department did their own hiring and firing.(see Caldwell

deposition (P Exh. 102)) Review of Stan Vonasek Department indicates that as of Nov.28,1994, he had 36 employees, out of which 5 were Asian, including 3 who were Indian & 2 employees were 50 years old and only one employee 61 years old. In terms of %, 2.8% above 60, 5.6% above 50 (EEOC was told that it was 25%), and 17% above 40.) In 1998/1999 thru 2003, there was no Facility Engineer and/or Manager of a minority group employed by TBTA.

8i. Stan Vonasek manufactured and solicited negative evidence against plaintiff once he found my age and gave untimely, untrue and fraudulent evaluation. Stan Vonasek finally replaced Aneja with a much younger FacilityEngineer, Moshe Adrian—white DOB 6/4/54 –17 years younger. Court should note that this indivdual is in the protective age group. However, NY Times reported that the Supreme Court has ruled "The fact that one person in the protected class has lost out to another person in the protected class is irrelevant, so long as he has lost out because of his age,According to **Hon Justice Scalia,** "the fact that a replacement is substantially younger than the plaintiff is a far more reliable indicator of age discrimination than is the fact that the plaintiff was replaced by someone outside the protected class."

Appellate judges based their decision without considering Plaintiff's factual information, which is submitted above.

APPELLATE JUDGES IGNORED US GOVT POSTAL CARRIER AFFIDAVITT

Plaintiff brought to the attention of appeal court that a Letter Brief (10 pages) was missing in the court record. Court requested me to file a motion to include exhibits, which I did on 6/24/02 (see App.3). Plaintiff also submitted motion for Petition for reconsideration

based on new documented evidence on 6/13/02, viz., affidavit from U.S.Govt. Postal clerk, who has been employed with the U.S.Govt. Postal Service for 20 years, stating that he delivered EEOC document between 7/8/1996 and 7/13/1996. Court accepted the AFFIDAVIT but denied hearing on 7/12/96.

B) **PERFORMANCE**

EMPLOYMENT RELATED TO BURNS AND ROE (18YEARS+)(ANDREW DANSICKER ESQ.DECLARATION IS FALSE)

Burns and Roe maintained that due to downturn in business I was laid off. Aneja had an excellent record in Management, Leader ship, etc.. Aneja had supervised 40 engineers for many years on DOE-CLINCH RIVER BREEDER REACTOR PROJECT located in Tennessee. Also managed $150million DOD-COE ,BZ Chemical DEMILITARIZATION PROJECT LOCATED IN ARKANSAS., supervising 26 engineers and 160 construction workers , without any complaint from any employee, contractor, or Govt. official, on Communication, Management or Technical skills. Aneja also had excellent working relations with representatives of GE, WESTING-HOUSE, ATOMIC INTERNATIONAL, TVA, STONE & WEBSTER, DEPT. OF ENERGY ..

Aneja has received commendations from Dept. of Energy which state," ---performed in an exceptional, effective and cooperative manner—" (P. exh. 91), Aneja has also received commendations from Department of Defense/Corps of Engineer ,"—I would like to take this opportunity to personally express my sincere appreciation for

the outstanding effort you give for several years to the BZ Demilitarization Project(P.exh.92); MTA-NYCT ,"—In closing let me again offer my congratulations to you for a job well done. I look forward to working with you in the future to finish the flushing project" signed by J..Forman, Senior Vice President, Capital Program Management (P.exh.93):; Construction Progress for quality product (P.exh.93).

C. THERE ARE MATERIAL ISSUES OF FACT IN DISPUTE MAKING SUMMARY JUDGMENT INAPPROPRIATE

1. Since his first day in District Court, Plaintiff has been stating that he received EEOC decision on 7/8/96 (see App. 52—66).
2. Pro se office advised Plaintiff on 10/4/96 that he had filed in a timely manner. Appellate Judges have assumed, mistakenly, that Plaintiff went to District Court clerk's office on 10/7/96.
3. Plaintiff never stated and/or admitted that he received letter on 7/6/96. It was Defendant's Counsel who mislead District Judge, see Petition for Writ of Certiorari App 39.
4. **APPELLATE JUDGES IGNORED US GOVT POSTAL CARRIER AFFIDAVIT.**

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mulcahy Angel Date 2/20/03

However, Appeal Court did not verify but that plaintiff signed the complaint on 10/4/96 & went to Prose office on 10/4/96 & not on 10/7/96 (*See* App. 70) as assumed by Appeal Court. Furthermore Appeal court ignored the fact that defendant was ordered on 4/29/97 (*See* App. 94) to file Motion to establish case was filed out of time but failed to follow D.C. order (see Transcript from App. 52)

Furthermore, Appeal Court accepted notarize letter from U.S. Gov't Postal Clerk stating that he delivered EEOC letter between 7/8/96 to 7/12/96. Thus complaint can't be out of time and per summary standard case should have been remanded to D.C. for jury trial, but failed to do so, only Supreme Court has the supervisory power to direct U.S. Court of Appeals for Second Circuit.

The details are provided herewith as follows,

THERE ARE MATERIAL ISSUES OF FACT IN DISPUTE MAKING SUMMARY JUDGMENT INAPPROPRIATE

A court may grant summary Judgment under Fed. R. Civ. P.56© only when "there is no genuine issue as to any material fact and ...the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). Where, as here, the nonmovant bears the ultimate burden to prove at trial that the

defendant misinformed Plaintiff (regarding his alleged performance evaluation) see Texas Department of Community Affairs v. Burdine, 450 US. At 253, 101 S. Ct. at 1093, he may defeat the summary judgment motion by procuring sufficient specific facts to establish that there is a genuine issue of material fact for trial. Celotex Corp. v. Catrett. 477 U.S. 317, 322, 106 S. Ct. 2548, 2553, (1, L. Ed. 2d. 265(1986).

In addition, in ruling on a motion for summary judgment, a court must, "resolve all ambiguities and draw all reasonable inferences in favor of the party defending against the motion."

Eastway Construction Corp. v. City of New York. 762 F.2d 243, 249(2d Cir, 1985), cert. denied. Finally, summary judgment is ordinarily inappropriate where intent and state of mind are at issue. Meiri v. Dacon. 759 F.2d at 998; Patrick v. LeFevre, 745 F.2d 153, 159 (2d Cir.1984). See Montana v. First Federal S& L of Rochester. 869 F. 2D 100(2d Cir. 1989).

In this particular case, performance evaluation was conducted fraudulently and was supposed to be kept in the department & reevaluated, but Aneja was terminated as a pretext due to the newly discovered age information in conjunction with his national origin status

on 10/4/96 & prose office advised on 10/4/96, it was filed timely and plaintiff has to bring required filing fee on 10/7. Thirdly, First District Judge, Hon. Judge Patterson ordered Defendant to file motion by 5/29/97 (See App. 52 & App. 94) to affirm that Plaintiff filed complaint with in 90 days, but Defendant failed to file such motion. Fourthly, at Summary Judgment hearing, (*See* App. 32), Plaintiff clearly informed second judge, Hon. District Court Judge Hellerstein that Plaintiff received post office notice on 7/5 due to 4th of July weekend; post office did not deliver until July 8, 1996. Hon. Judge assumed without any verification without any verification contrary to summary judgment standard, that Plaintiff received EEOC determined on 7/6/96

In addition, plaintiff submits that there is basis for an equitable tolling. The 90-day rule should be considered in the nature of a statute of limitations subject to waiver, estoppel or equitable tolling. Johnson v. AL Tech Specialties Steel Corp. 731 F. 2d 143 (2d cir. 1984). In Tolliver v. Sullivan County, 841 F. 2d 41 (2 d cir. 1988), plaintiff had the complaint to the pro se clerk prior to the 90- day limitation period expiring on the notice of right to sue. However, the complaint was not filed until the expiration of 90 days i.e. on 10/7. The court held that as long as the initial complaint was received prior to the 90-day limitation period, the statute should be equitably tolled. Tolliver, supra, at 42. See also, Brown v. Enzyme Development Division of Biddle Sawyer Corp., 780 F. Supp. 1025(S.D.N.Y. 1992). In the instant case, plaintiff went to the pro se office with signed complaint on 10/4/99 and was advised that I filed

 1 REV.

USPS Receipt

Article No: 2 2 8 3 1 8 5 4 4
Today's Date: 7/5/96
Sender's Name: [illegible]

Letter, Certified

Name, address, received by signature: [illegible]

Delivered by: Illegible (1/7/97) 1R
Date: